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Judge Rules CBS Study Not Admissible in Trial

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The presiding judge in Gen. William C. Westmoreland's \$120 million libel suit ruled inadmissible as evidence yesterday a CBS internal report that found the network had violated its news standards in the preparation of a disputed documentary on Vietnam.

The judge, Pierre N. Leval of Federal District Court in Manhattan, said in a ruling that the report "is largely irrelevant to the issues before the jury and consists in great part of opinion and hearsay of varying degrees of remoteness."

At the same time, however, Judge Leval said that various "items" from the report could be put before the court.

The report, known as the Benjamin report, was prepared by Burton Benjamin, a senior executive producer at CBS Reports.

Legal observers differed in their reactions to the ruling. Dan M. Burt, the attorney for General Westmoreland, contended that it would have "very little, if any," effect on the trial.

10 Standards Found Broken

After a day in court unusual because of the presence of five top CBS News executives, the attorney for CBS, David Boies, said the ruling would have an "enormous impact" on the trial, particularly the inadmissibility of the Benjamin report's conclusions that were critical of the producer of the documentary, George Crile.

In his 60-page report, Mr. Benjamin concluded that although the creators of the disputed documentary, "The Uncounted Enemy: A Vietnam Deception," stood by the facts in it, they had broken 10 CBS News standards. Among these was "an imbalance in presenting two sides of the issue" and violations that ranged from "coddling of sympathetic witnesses" to film editing that distorted interviewing sequences.

Floyd M. Abrams, a lawyer and an authority on libel law, said, "The judge has made a significant ruling which lessens the likelihood that General Westmoreland can prevail."

But Mr. Abrams said that until a consensus was reached on what parts of the Benjamin report's evidence were admissible, no conclusion would be possible on whether the ruling would hurt the general's case.

'Fairness Not at Issue'

The ruling followed submissions of memorandums to the court from Mr. Burt supporting the admissibility of the report and from Mr. Boies opposing it.

Judge Leval wrote in his ruling that the standards addressed in the report — the fairness or one-sidedness of a documentary — were not relevant to the trial of a public figure's libel case.

"The fairness of the broadcast is not at issue in the libel suit," Judge Leval wrote. "Publishers and reporters do not commit a libel in a public-figure case by publishing unfair one-sided attacks. The issue in the libel suit is whether the publisher recklessly or knowingly published false material."

He ruled that the extensive discussions of fairness and of CBS standards in the Benjamin report "cannot fairly be brought before a jury."

"A publisher," he wrote, "who honestly believes in the truth of his accusations (and can point to a nonreckless basis for his beliefs) is under no obligation under the libel law to treat the subject of his accusations fairly or even-handedly."

In the report Mr. Benjamin said he received a call on May 24, 1982, from Van Gordon Sauter, then president of CBS News, asking whether Mr. Benjamin would investigate charges in a May 1982 TV Guide article that CBS had violated journalistic ethics in the documentary.

"My best recollection is that I said yes right away," Mr. Benjamin said in an interview yesterday. "I figured somebody had to do it."

Mr. Benjamin said he had worked with two researchers for six weeks. "I started as though I was writing a news story," he said, "with no apprehensions. I had a great concern that we be accurate."

'The Report Spoke for Itself'

He said that from the time he was asked to do the report until now he had not given any interviews on it "because the report spoke for itself, and there was nothing I could add or subtract."

"All I knew," he said, "was that there were allegations. I didn't know that they were true, or could have been true. I had no sense of being the protector of the flag. The only feeling I had was that I thought this was important and I wanted to do the best job I could. I have spent 28 years at CBS News, and I care about it."

After he submitted the report, he said, he began to feel some hostile reverberations within CBS. "I expected that," he said. "That's a given. But it wasn't excessive. I think ventilation is always good. It shows the character of an organization that it took on a project of this sort. That's good for any news organization."

George Vradenburg 3d, a CBS vice president and deputy general counsel, said Judge Leval had "separated out the issues that journalists would think about from the issues that lawyers think about in libel cases."

"As Judge Leval says," Mr. Vradenburg added, "the issues addressed in the Benjamin case are not the issues addressed in a libel case. I think it would have confused the case if the report had been admitted, but I don't think it might have been harmful."